IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 9562 of 2004

Between:

V. Ramakrishna Rao, S/o. Late Ramarao,
Visakhapatnam Steel Plant Employees Consumers Cooperative Stores Ltd. Visakhapatnam - 530 032,
Residing at D.No. 55-10-1, MMTC Colony, Seethammadhara, Visakhapatnam-22.

..... PETITIONER

AND

1 Viskhapatnam Steel Plant Employees Consumers, Cooperative Stores Ltd. Regd. No. B-1890,
represented by its President, Office at Russian School Building, Sector-I, Sector, Ukkunagaram, Visakhapatnam-530 032.
2 Visakhapatnam Steel Plant Employees Consumers Cooperative Stores Ltd. Regd. No. B-1890,
represented by its Enquiry Officer & Vice-President, Mr. A. Viswanatham, father's name not known, Age Not knowm,
Office at Russian School Building, Sector-I, Sector, Ukkunagaram, Visakhapatnam - 530 032.
3 Government of Andhra Pradesh, Department of Cooperation, represented by the Joint Registrar & District
Cooperative Officer, 5th floor, Vuda Building, Siripuram, Visakhapatnam-530 003.
4 Government of Andhra Pradesh, Department of Cooperation, represented by the District
Collector (Coop), Visakhapatnam District.
5 Governmetn of Andhra Pradesh, Department of Cooperativon, represented by the Registrar & Commissioner,
Gruhakalpa Buildings, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue an order, Direction or a writ one in the nature 'MANDAMUS' declaring (I) the order dt. 04-05-2004 of the 1st respondent (II) the show cause notice dt. 7-12-2003 of the 1st respondent (III)the action of 2nd respondent concluding the enquiry proceedings under its order dt. 2-12-2003 including the procedure adopted by the 1st & 2nd respondents in conducting the departmental enquiry against the petitioner (IV) the action of the respondent 1 and 2 in not supplying the material documents, as illegal, arbitrary and (V) the respondents 1 and 2 are incompetent to initiate disciplinary action against the petitioner (VI) the action of the 3rd respondent in taking action upon the complaint dt. 16-12-2003 given by the petitioner, and by SETTING ASIDE the order dt. 04-05-2004 of the 1st respondent to reinstate the petitioner with back salaries with all attendant benefits, and pass

Counsel for the Petitioner:MR.A.SRINIVASA SARMA

Counsel for the Respondent No.: GP FOR COOPERATION

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 9562 of 2004

O R D E R:

This writ petition is filed seeking to set aside the order dated 4.5.2004 of the 1st respondent removing the petitioner, who was working as Business Manager of Visakhapatnam Steel Plant Employees Consumers Cooperative Stores Limited, from service and for other reliefs.

The brief facts that are necessary for the disposal of the writ petition are as follows:

A charge sheet dated 27.8.2003 was issued to the petitioner on the allegations of financial loss, negligence and dereliction of duty. The petitioner in his interim reply dated 10.9.2003 has denied the charges levelled against him. He sought for copy of the audit report, preliminary enquiry report etc. Even the audit report made under Section 51 of the Cooperative Societies Act (for short,

'the Act') has not made him liable for the allegation of financial loss to the Stores. A regular departmental enquiry was ordered against the petitioner appointing an Enquiry Officer. Thereafter the 2nd respondent conducted the enquiry. On 2.12.2003 the 2nd respondent addressed a letter to relieve him from the post of Enquiry Officer treating the said letter as the Enquiry Report. The 1st respondent treated the same as Enquiry Report and issued the show-cause notice for the proposed punishment of removal from service, for which the petitioner filed a writ petition in W.P. 27273 of 2003. Initially, interim suspension of all further proceedings was granted, but later the said writ petition was dismissed on the ground of maintainability. Thereafter the impugned proceedings have been passed. Questioning the same, the present writ petition is filed.

Respondents 1 and 2 have filed the counter affidavit stating that the writ petition is not maintainable because the respondents 1 and 2 are cooperative societies, registered under the provisions of the Cooperative Societies Act and the cooperative society is not a State within the meaning and definition of Article 12 of the Constitution. Respondents 3 and 4 have no administrative control over the respondents 1 and 2 and they will have only supervisory powers with regard to the functions of respondents 1 and 2. The entire administration vests upon the Managing Committee of the respondents 1 and 2. Therefore, the writ petition is not maintainable. Furthermore, it is stated, the petitioner filed W.P. 27273 of 2003 before this court for the identical relief and the same was dismissed by this court by order dated 27.4.2004 and basing on the audit report and the enquiry report submitted u/Sec. 51 of the Act by the Auditors and Officers of the Cooperative Department, the charge sheet was issued. All the copies of the relevant portions of the Act were given to the petitioner and all the material information relating to serious discrepancies mentioned in the charges are available in the audit reports. The petitioner was intentionally avoiding to face the charges framed against him and he was not at all cooperating with the Enquiry Officer. In spite of sufficient, proper and reasonable opportunity at the

stages of charge sheet and enquiry, the petitioner did not avail the same to defend his case but only making untrue and false statements. Therefore the respondents 1 and 2 pray to dismiss the writ petition.

Learned counsel for the petitioner contended that the letter dated 21.12.2003 cannot be treated as an enquiry report. The 1st respondent is not competent to initiate disciplinary proceedings against the petitioner. The special bye-laws framed by the 5th respondent have not been followed. Non-furnishing of material documents and not providing reasonable opportunity to defend the case vitiate the so-called enquiry report. Hence, he prays to set aside the impugned proceedings.

On the other hand, learned counsel for the respondents 1 and 2 contended that for the same relief the petitioner filed W.P.27273 of 2003 and the same has been dismissed by this court to pursue his remedies in respect of the grievances urged by him in an appropriate and alternate forum; that the respondents 3 and 4 do not have any administrative control over the affairs of the society. Therefore, the writ petition filed against the 1st and 2nd respondents is not maintainable under law. He prays to dismiss the writ petition.

The earlier writ petition in W.P. 27273 of 2003 is filed for the following relief:

> "to declare (i) the show-cause notice dated 7.12.2003 of the 1st respondent, (ii) the action of the 2nd respondent concluding the enquiry proceedings under its order dated 2.12.2003, (iii) the procedure adopted by the 1st and 2nd respondents in conducting the departmental enquiry against the petitioner (iv) the action of the respondents 1 and 2 in not supplying the material documents is illegal, arbitrary and (v) the respondents 1 and 2 are incompetent to initiate disciplinary action against the petitioner, and by setting aside the show cause notice dated 7.12.2003 of the 1st respondent including the departmental enquiry conducted by the 2nd

respondent".

This court while dismissing the above writ petition held that it is not pleaded, urged or demonstrated that either any of the steps in the disciplinary proceedings or the impugned show cause notice is violative of any statutory provisions or violates any of the legislatively protected rights of the petitioner. Therefore, no cause of action adjudicatable in a public law forum under Article 226 of the Constitution falls for determination in that case. That judgment has become final. Now the relief sought for in this writ petition is one and the same except questioning the final order issued by the 1st respondent dated 4.5.2004.

What has to be seen now is whether there are any grounds to sustain the impugned proceedings which is the termination of service by way of removal. As seen from the letter addressed by the enquiry officer dated 2.12.2003, though it is in the form of letter addressed to the President of the Cooperative Society, but it is specifically stated that the said letter may be taken as a report of the enquiry. As seen from this letter, prima facie reasonable opportunity was given. As a matter of fact it is stated in the affidavit that the petitioner attended all the three sittings of the enquiry. He also admitted that he signed in the enquiry proceedings. The grievance of the petitioner is that the documents required for the purpose of enquiry have not been furnished to him. But, as seen from the allegations in the counter it is stated that all the material documents were provided to the petitioner and he was given sufficient, proper and reasonable opportunity at every stage in the process of disciplinary proceedings. At this stage prima facie the petitioner failed to show that he was denied reasonable opportunity to defend the case. So also, he failed to establish that the documents required for the purpose of using the same in the enquiry are not given to him.

Learned counsel for the respondents 1 and 2 relied upon

a decision in **V.P. Rama Rao v. District Co-operative Officer/Registrar, Vizayanagaram** wherein it is held:

> "The Bye-Laws of the 2nd respondent-Bank are neither statutory nor have a statutory flavour. The 2nd respondent-Bank is neither pleaded, urged or demonstrated to be an Agency or instrumentality of the State. The service relationship between the petitioner and the 2nd respondent-Bank does not fall to be considered by this court in exercise of its jurisdiction under Article 226 of the Constitution because no constitutional or public law obligations are owed by the 2nd respondent to the petitioner qua the service relationship between them. The grievance of the petitioner as against the 2nd respondent-Bank in respect of his service relationship with the said respondent in respect of violation of the Bye-laws of the society, cannot be considered by this court under Article 226 of the Constitution. The position in this area is no longer *res integra* in view of the decision of the Full Bench of this court in Sri Konaseema Cooperative Central Bank Limited Amalapuram and another v. N. Seetharama Raju, AIR 1990 AP 171 and of the Supreme Court in Federal Bank Limited v. Sagar Thomas and others, 2003 (7) Supreme 22. In respect of this grievance the petitioner is at liberty to pursue his remedies before an appropriate forum including a jurisdictional civil court".

On the other hand, learned counsel for the petitioner relied upon a decision reported in **Thanikachalam M. v. M.A.P.C.M. Society** where under the Full Bench of Madras High Court held:

> "It is also to be noted that this court while exercising power under Article 226 of the Constitution, which is

> discretionary in nature, is a court not being a court of Appeal, more so, when alternative remedy is available under a particular statute, and when the Act and the Rules provide for so many safety measures, and when the discretionary power of this court under Article 226 remains in tact, we do not want to substitute our view that the writ petition against Co-operative Societies is maintainable in the garb of efficacious remedy as a matter of course, as discussed above. Unless the petitioner is able to show some special circumstances, and the fact that the Authorities concerned while passing orders have failed to perform their duties imposed by the statute, as discussed above, no writ petition can be maintainable.

Even the above decision will not help the case of the petitioner because the petitioner failed to show some special circumstances or that the authorities concerned while passing the orders have failed to perform the duties imposed by the statute. Relying upon the decision of this Court reported in **Sri Konaseema Cooperative Central Bank Limited Amalapuram and another v. N. Seetharama Raju** and of the Supreme Court in **Federal Bank Limited v. Sagar Thomas and others**, this court held that the writ petition with regard to the self-same relief except the final orders passed by the respondents 1 and 2 cannot be re-agitated. The petitioner is neither pleaded, urged or demonstrated that the 1st respondent-society comes within the meaning of agency or instrumentality of the State within the meaning of Article 12 of the Constitution of India so as to invoke the jurisdiction of this court under Article 226. So also the petitioner failed to show that there was a contravention of the principles of natural justice. In a decision reported in 2003 (8) SCC 639 between **General Manager, Kisan Sahkari Chini Mills Limited v. Satrughan Nishad** it was held as follows:

> "In the case of Pradeep Kumar

> Biswas v. Indian Institute of Chemical Biology (2002) 5 SCC 111), a Bench of seven Judges of this Court, in para 27 of its judgment has noted and quoted with approval in extenso the aforesaid tests propounded in International Airport Authority case (1979 3 SCC 489) and approved in the case OF Ajay Hasia (1981 (1) SCC 722) for determining as to when a corporation can be said to be an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12 of the Constitution. There the Bench referred to the case of Chander Mohan Khanna v. NCERT (1991 (4) SCC 578) where, after considering the memorandum of association and the rules, this court came to the conclusion that NCERT was largely an autonomous body and its activities were not wholly related to governmental functions and the government control was confined only to the proper utilization of the grants and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. Further, reference was also made in that case to the decision of this court in Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers Assn. (2002 (2) SCC 167) where it was held that the company was an authority within the meaning of Article 12 of the Constitution as it was substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government".

There was no pleading in the writ petition that the 1st respondent-society was substantially financed and financially controlled by the Government or managed by the Board of Directors nominated or removable at the instance of the Government or carrying out the important functions of public interest. Therefore, I am

of the considered opinion that the writ petition is totally devoid of merit. Further, this court also earlier took a view in respect of other reliefs to the effect that the petitioner has to pursue his remedies in alternative forum. There is no reason to deviate from the earlier findings given by this court in W.P.27273 OF 2001.

Hence, the writ petition is dismissed at the stage of admission.

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K.C. Bhanu, J.

Dt. 06–08—2004.

MVB**.**

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 President, Office at Russian School Building, Sector-I, Sector, Viskhapatnam Steel Plant Employees Consumers, Cooperative Stores Ltd. Regd. No. B-1890, Ukkunagaram, Visakhapatnam-530 032.
2 Enquiry Officer & Vice-President, Mr. A. Viswanatham, Visakhapatnam Steel Plant Employees Consumers Cooperative Stores Ltd. Regd. No. B-1890, Office at Russian School Building, Sector-I, Sector, Ukkunagaram, Visakhapatnam - 530 032.
3 The Joint Registrar & District Cooperative Officer Government of Andhra Pradesh, Department of Cooperation, , 5th floor, Vuda Building, Siripuram, Visakhapatnam-530 003.
4 The District Collector (Coop), Visakhapatnam District.
Government of Andhra Pradesh, Department of Cooperation,

5 The Registrar & Commissioner,
Government of Andhra Pradesh, Department of Cooperativon, Gruhakalpa Buildings, Hyderabad.

6.2CCs to G.P. for Corporation.

7.2CD copies